IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2019

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.14978 of 2019
and
Crl.M.P.No.7347 of 2019

S.S.Gopalarathnam
Managing Director
Cholamandalam MS General Insurance Company Limited,
Dare House, No.2, NSC Bose Road,
Chennai- 600 001. ... Petitioner

-vs-

1.The Inspector of Police,
Central Crime Branch,
EBP-III, Team 21-A,
Vepery, Chennai- 600 007.

2.Inspector of Poplice,
Korukkupet Police Station H-4,
Chennai- 600 021.

3.R.V.Dinesh Kumar
Proprietor : Sunpark Global Impex
(Office address: No.56, Halls Road,
Egmore, Chennai - 600 008) ... Respondents

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to quash the FIR in Crime No.178 of 2019 EDF-3, Team 21-A, CCB, Chennai on the file of the first respondent.

For Petitioner : Mr.N.Vijayaraghavan

For R1 and R2 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

For R3 : Mr.Kumaresan

ORDER

This petition has been filed seeking to quash the First Information Report which is pending investigation before the first respondent in Crime No.178 of 2019.

2.The case of the prosecution is that the defacto complainant had insured his vehicle with the Cholamandalam MS General Insurance Company Limited. The vehicle met with an accident on 16.08.2018 and the same was reported to the concerned authorities on 05.09.2018. The vehicle was thereafter sent to the authorised service centre who estimated the loss at a sum of Rs.54,38,000/-(Rupees Fifty Four Lakhs and Thirty Eight Thousand only). The insurance company also assessed the vehicle and gave an estimate of a sum of Rs.23,54,110/-(Rupees Twenty Three Lakhs Fifty Four Thousand One Hundred and Ten only). It is alleged that the car was thereafter shifted to the authorized service centre where the loss was assessed at a sum of Rs.40,72,695/-(Rupees Forty Lakhs Seventy Two Thousand Six hundred and Ninety Five only). During January 2019, a letter is said to have been issued to the defacto complainant stating that the vehicle has not been assessed and thereby the insurance company has delayed the payment of the claim amount, for the loss suffered by the defacto complainant. This according to the defacto complainant, amounts to cheating, since the defacto complainant was deprived of the claim amount, which he was entitled to receive from the insurance company.

3.The learned counsel for the petitioner submitted that even if the entire complaint is read as it is and the allegations are taken as it is, no offence of cheating is made out and therefore, the entire First Information Report is an abuse of process of law. The learned counsel for the petitioner however, submitted that since the third respondent will be entitled to make his claim for the loss suffered by him due to the accident, which resulted in the damage of the car, he will persuade the insurance company to offer the maximum amount claimed by the third respondent. A memo was also filed before this Court by the petitioner. The relevant portion of the memo is extracted hereunder:

> "2.By letters dt.6/7/2019 and 26/7/2019, the insurer has already offered to consider compromise, without prejudice to their rights. The petitioner has on date offered Rs.22,00,000/-(cash) plus Rs.7,75,000/-(an offer from a salvage buyer for the wreck), which wreck the 2nd respondent can retain.

3.The petitioner submits that licensed surveyor has suggested repair loss as basis for settlement. But the owner of vehicle is insisting on Total Loss as per the original Estimate. The surveyor on physical inspection has not agreed. Insurer has been advised to ignore the bonafides of the claim and admissibility of it, in order to embrace closure.

4.The wreck is now available in Chennai and petitioner has communicated to the owner that they had offer for Rs.7,75,000/- as the maximum sum to realise, as salvage. Owner of vehicle has failed to respond/ agree and the offer has since lapsed. Now, further visit by surveyor has disclosed several parts of the wreck have gone missing and the value is depleting.

5.To avoid any continued dispute without any reference to the basis as repair or total loss etc., insurer is now advised to escalate their offer to Rs.25,00,000/-(cash) with liberty to owner of vehicle/2nd respondent, to retain the wreck valued at Rs.7,75,000/- in full quit."

4.The learned counsel for the petitioner submitted that inspite of the fact that no offence has been made out in the First Information Report, the insurance company wants to give a quietus to the entire issue and therefore the above said offer has been made without prejudice to the right of the petitioner to contest the case on merits.

5.The learned counsel appearing on behalf of the third respondent submitted that the car was insured with the insurance company for a sum of Rs.43,00,000/-(Rupees Forty Three Lakhs only). The loss was estimated by the dealer at Kerala at Rs.54,38,000/-(Rupees Fifty Four Lakhs and Thirty Eight Thousand only). The authorised dealer had estimated the loss at Rs.40,72,695/- (Rupees Forty Lakhs Seventy Two Thousand Six Hundred and Ninety Five only). The surveyor from the petitioner company has estimated the loss at Rs.23,54,110/-(Rupees Twenty Three Lakhs Fifty Four Thousand One Hundred and Ten only).

6.The learned counsel submitted that the third respondent is also interested in giving a quietus to the issue provided that a reasonable amount is offered towards the claim made by him. The learned counsel submitted that the third respondent is willing to take the offer of a sum of Rs.25,00,000/-(Rupees Twenty Five Lakhs only). However, instead of retaining the wreck which is valued at Rs.7,75,000/-(Rupees Seven Lakhs Seventy Five Thousand only) by the insurance company, the insurance company can pay that amount of Rs.7,75,000/- in addition to the sum of Rs.25,00,000/-.

7.The learned counsel for the petitioner submitted that this would be a reasonable amount which will satisfy the claim made by the third respondent.

8.This Court has carefully considered the submissions made on either side and the materials available on record.

9.Even when the matter came up for admission before this Court on 12.06.2019, this Court had expressed its mind to the counsel for the third respondent that the allegations made in the First Information Report do not prima facie make out an offence of cheating. However, taking into consideration the nature of dispute between the parties, this Court had put across to the counsel appearing on behalf of the petitioner to take instructions from his client as to whether the insurance company is willing to offer a reasonable amount to settle the claim made by the third respondent. The learned counsel for the petitioner on instructions from his client, has filed the memo which has been referred supra. The amount that has been offered in the memo at Paragraph -5, looks very reasonable, considering the facts of the case. The request made by the counsel for the third respondent to direct the insurance company to pay the sum of Rs.7,75,000/- instead of making the third respondent retain the wreck, cannot be countenanced. Since this Court exercising its jurisdiction under Section 482 of Cr.P.C, will be going beyond its jurisdiction to give any such positive directions to the insurance company. Looking at the offer from any angle, this Court is convinced that the offer made at Paragraph-5 of the memo is reasonable.

10.In view of the above, this Court is of the considered opinion that the allegations made in the First Information Report, even if it is taken as it is, does not constitute an offence of cheating under Section 420 of IPC. Therefore, the First Information Report is unsustainable in the eyes of law and the pendency of the First Information Report will amount to abuse of process of law. However, since insurance company has come up with a reasonable offer to the third respondent to settle the claim, this Court thought it fit that the dispute can be resolved in an amicable manner by giving a quietus to the entire dispute.

11.Therefore, this Court directs the insurance company to comply with the offer made at paragraph-5 of the memo filed before this Court. In the result, the First Information Report in Crime No.178 of 2019, pending on the file of the first respondent, is hereby quashed and accordingly, this Criminal

Original Petition is allowed with the above directions. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

pnn

To

1.1.The Inspector of Police,
Central Crime Branch,
EBP-III, Team 21-A,
Vepery, Chennai- 600 007.

2.Inspector of Poplice,
Korukkupet Police Station H-4,
Chennai- 600 021.

3.The Public Prosecutor,
Madras High Court.

+1cc to Mr.N.Vijayaraghavan, Advocate SR.No.70309

+1cc to Mr.Kumaresan, Advocate SR.No.70385

Copy To

S.S.Gopalarathnam
Managing Director
Cholamandalam MS General Insurance Company Limited,
Dare House, No.2, NSC Bose Road,
Chennai- 600 001.

CRL.O.P.No.14978 of 2019
and
Crl.M.P.No.7347 of 2019

MG(CO)
GMY(28/08/2019)